

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF OKLAHOMA**

The Honorable Tom R. Cornish

INSTRUCTIONS GOVERNING ADVERSARY PROCEEDINGS

PLEASE READ CAREFULLY

INTRODUCTION:

This instruction sheet is intended to give guidance to counsel involved in adversary proceedings before this Court as to what is expected from the Scheduling Conference through Trial. The rules and instructions contained herein shall bind the parties as if included in the Local Rules of the Court. Neither counsel nor the parties may deviate from the mandatory rules without leave of the Court. All parties are referred to Part VII of the Local Rules for details on the responsibilities of the parties from filing through the Scheduling Conference.

A. After Scheduling Conference and Before Pre-Trial Conference:

Counsel and parties shall comply with the following requirements prior to the scheduled Pre-Trial Conference:

- 1) Within fifteen (15) days after the Scheduling Conference, all counsel shall exchange in writing Preliminary Witness and Exhibit List for the purpose of aiding discovery. This list shall not be a final statement of evidence to be presented at Trial, but should be exchanged in good faith.

The list of witnesses shall contain the name and address of each witness with a brief summary of anticipated testimony. The list of exhibits shall state each exhibit with specificity.

These lists shall not be filed with the Court.

- 2) Discovery shall be conducted within the time ordered by the Court at the Scheduling Conference. Any request for extension of the discovery cutoff date must be made prior to the expiration of the original time set for discovery and must contain a statement of opposing counsel's acquiescence or opposition. Discovery may be conducted by agreement of all counsel/parties beyond the time set by the Court if the continuation of discovery by agreement does not delay the conducting of the Pre-Trial Conference and/or Trial.

3) Most discovery disputes should be resolved between counsel. However, should a Motion in aid of discovery be made, said Motion must be accompanied by a statement from counsel for the movant that opposing counsel has been contacted and the dispute cannot be resolved.

4) Five (5) days prior to the Pre-Trial Conference,

(a) counsel shall exchange FINAL lists of witnesses and exhibits.

The witness list shall contain the name and address of each witness and a brief summary of the witness' anticipated testimony.

The exhibit list shall specifically identify the exhibit to be introduced into evidence at trial and a brief description of the intended purpose for its introduction.

These lists shall not be filed with the Clerk of the Court.

(b) Counsel shall exchange copies of all exhibits anticipated for use at trial.

(c) Counsel shall submit to the Court a Pre-Trial Memorandum of Position. Said Memorandum shall contain:

i) Brief statement of relevant facts;

ii) Evidence to be introduced that will prove these facts, whether testimonial or documentary;

iii) Legal issues in controversy;

iv) Legal authority to support the party's position with regard to these legal issues.

This Memorandum shall be filed with the Clerk of the Court to aid the Court in preparing for the Pre-Trial Conference.

B. Pre-Trial Conference:

The Pre-Trial Conference will be utilized to narrow all issues, be they legal or factual, and facilitate the effective organization of the case in anticipation of trial. Counsel who will conduct the trial shall attend the Pre-Trial Conference. Failure to appear, an unprepared appearance, or a failure to participate in good faith may result in dismissal or sanctions including striking pleadings, default judgments, assessment of expenses, or such other relief the Court may deem appropriate.

At the Pre-Trial Conference, counsel shall be prepared to discuss:

- 1) The elimination of unnecessary claims and defenses;
- 2) The possibility of stipulations and admissions of fact;
- 3) The elimination of unnecessary proof and cumulative evidence;
- 4) Exhibits and witnesses, the necessity for same, the potential for stipulation of admission, stipulation of qualification of experts, the potential for stipulation of content or testimony thus eliminating need for introduction of physical exhibit into evidence or of examining witness at trial;
- 5) Disposition of pending matters, including trailing motions, the necessity and admissibility of deposition testimony at trial;
- 6) Any other appropriate matters in need of resolution in order to effectuate trial;
- 7) Potential trial dates and times and conflicts;
- 8) The necessity for Trial briefs;
- 9) The necessity for the submission of proposed Findings of Fact and Conclusions of Law.

C. Pre-Trial Order:

The Pre-Trial Order will control the course of the trial and may not be amended without the consent of opposing counsel or authorization by the Court. It shall be the responsibility of counsel for the Plaintiff to prepare the Pre-Trial Order with the cooperation and input of defense counsel. Said Pre-Trial Order shall contain the information on and substantially conform to the proposed Pre-Trial Order accompanying this instruction sheet.

D. Trial:

Trial shall be conducted at the date and time prescribed by the Court at the Pre-Trial Conference. The following instructions shall govern the conduct of the parties at trial:

- 1) Five (5) days prior to the trial, counsel shall have marked all exhibits. Plaintiff's exhibits shall be marked numerically; Defendant's exhibits shall be marked alphabetically. Counsel shall exchange and file Witness and Exhibit Lists with the Court five (5) days prior to the Trial. Simultaneously, counsel shall provide all copies of the exhibits to opposing counsel and two copies for the Judge.
- 2) During the trial copies of the exhibits shall be accepted by the Court Recording

Deputy upon introduction and admission and will not be returned to counsel.

- 3) If the parties have stipulated to the admission of exhibits, the parties shall so inform the Court at trial.
- 4) Counsel shall have prepared the exhibits in sequential order of intended introduction at trial prior to the time scheduled for trial.

E. Record of the Trial:

The official record of the trial is taken by digital media (FTR) recording. Microphones are placed at strategic locations in the Courtroom. Counsel can take a number of steps to facilitate the record taking in the Courtroom:

- 1) Give a business card to the person operating the electronic recording equipment (the Court Recording Deputy);
- 2) When speaking on the record, make certain that you talk directly in front of a microphone;
- 3) At the beginning of the trial, identify yourself at a microphone and spell your name for the record;
- 4) Make certain that all witnesses which counsel calls to testify identify themselves clearly and spell their names;
- 5) Make certain that verbal responses are elicited from witnesses;
- 6) If any witnesses will present testimony containing unusual or technical vocabulary, prepare a list of such names and terms for the Court Recording Deputy.

For the convenience of counsel, a remote readout indicator (index counter) is located on the Bench. Counsel may write down the index numbers as an aid to locating a portion of the record to which you may wish to refer or playback as needed.

Also, the index counter may be used to identify portions of the record which counsel may want duplicated or transcribed for appeal purposes or otherwise.

Copies of the digital recordings or of a transcript of the record may be obtained from the Court Recording Deputy by submitting the appropriate order forms. These forms are available from the Court Recording Deputy or on the Court's website.

On this _____ day of _____, _____, the parties to this action, by and through counsel, submit this Pre-Trial Order to the Court for approval, pursuant to the Pre-Trial Conference conducted _____, _____, with _____ appearing for the Plaintiff(s) and _____ appearing for the Defendant(s).

A. BASIS OF ACTION

(State the nature of the action, setting forth specific Bankruptcy Code Sections giving rise to the Complaint).

B. JURISDICTIONAL BASIS

(State the legal basis for this Court's jurisdiction, enabling it to make appropriate rulings resulting in a final adjudication of the case on the merits).

C. BRIEF STATEMENT OF STIPULATED FACTS

(Set forth facts not in dispute between the parties and therefore that require no proof at trial. Facts set forth should be, of course, relevant to the proceeding and should be stated with as much specificity as possible).

D. ISSUES OF FACT

(Set forth **with specificity** all factual issues which are in dispute and to which evidence will be directed at trial).

E. EXHIBITS

Plaintiff 's and Defendant's lists of exhibits attached.

(List all exhibits to be offered into evidence at trial by each party in the order of intended introduction. This may be done by attaching the completed exhibit list forms which will be utilized at trial to the Pre-Trial Order. Exhibits omitted from the Pre-Trial Order will not be accepted into the record at trial without leave of the Court).

F. WITNESSES

Plaintiff 's and Defendant's lists of witnesses attached.

(List all witnesses who will or may be called at trial for testimony. This may be done by attaching the completed witness list forms which will be utilized at trial to the Pre-Trial Order. Witnesses omitted from the Pre-Trial Order will not be allowed to testify at trial without leave of the Court).

G. ISSUES OF LAW

(Set forth **with specificity** all legal issues which are in dispute. These issues should have been addressed in detail in the Pre-Trial Memoranda of Position filed prior to the Pre-Trial Conference).

H. The possibility of settlement has been thoroughly explored by the parties and the prospects for settlement prior to trial are _____. [insert excellent (will be settled); good (may be settled); or poor (will not be settled)].

I. This Order sets forth all issues of fact and law, evidence intended to be introduced at trial in resolution thereof and admissions and stipulations which the parties agree remain outstanding and in need of resolution by the Court in this matter. This Order shall supercede all previous pleadings in this matter and shall control the subsequent course of this action unless modified by a subsequent order and only then to prevent manifest injustice. (Bankruptcy Rule 7016, incorporating Rule 16, Fed. R. Civ. P.)

J. ANTICIPATED LENGTH OF TRIAL

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APPROVED AS TO FORM AND CONTENT:

Attorney for Plaintiff

Attorney for Defendant

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

**WITNESS & EXHIBIT LIST INSTRUCTIONS
FOR ATTORNEYS**

<p>WITNESS LIST: Use Eastern District Bankruptcy Form provided</p>	<p>(1) Copy to Opposing counsel</p>	<p>Original (Signed) to U.S. Bankruptcy Court</p>	<p>(3) Copies to U.S. Bankruptcy Court</p>
<p>EXHIBIT LIST: Use Eastern District Bankruptcy Form provided</p>	<p>(1) Copy to Opposing counsel</p>	<p>Original (Signed) to U.S. Bankruptcy Court</p>	<p>(3) Copies to U.S. Bankruptcy Court</p>
<p>EXHIBITS:</p> <p>Exhibits will not be returned.</p> <p>Do not submit Originals to the Court.</p> <p>Plaintiff's Exhibits are marked numerically.</p> <p>Defendant's Exhibits are marked alphabetically</p>	<p>(1) Marked copy to Opposing counsel</p>	<p>(2) Marked copies to U.S. Bankruptcy Court</p>	<p>(1) Marked copy to Court Recording Deputy upon introduction and admission at the trial or hearing</p>

